IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2266 OF 2005

AND

WRIT PETITION NO.2024 OF 2005

In W.P.No.2266 of 2005 :

Between:

D. Srikanth Kumar, S/o.Lakshmana Murthy,

Aged 25 years, Occ; Student, Resident of Kachiguda,

Hyderabad.

..... PETITIONER

AND

1. Osmania Medical College, Hyderabad, rep. by its Principal.
2. N.T.R. University of Health Sciences, Vijayawada, rep. by its Registrar.
3. The Vice-Chancellor, N.T.R. University of Health Sciences, Vijayawada. … Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ order or direction more particularly one in the nature of Writ of Mandamus;

i. declaring the proceedings issued by the respondents 2 and 3 in proceedings No.E1 (c)/04919/2004, dated 27-1-2005 disqualifying the petitioner from appearing in any university examination for a period of one year including September / October, 2004 examination i.e., Final MBBS Part-II as punishment for use of unfair means as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and against the Standing Orders of the Executive Council on punishment for use of unfair means and set aside the same; consequently

ii. direct the respondents to declare the results of the petitioner's Final MBBS Part-II examination with Registration NO.9907164 held in the month of October / November, 2004.

Counsel for the Petitioner: MR. Nandigam Krishna Rao

Counsel for the Respondents 2 & 3: Dr. Y.Padmavathi

Counsel for the 1st respondent : Mr. Deepak Bhattacharjee

IN W.P.NO.2024 OF 2005 :

Between:

C.Sainath, S/o.C.Mallaiah, 48 years,

Occ: Student, Resident of H.No.11-3-366/1&2,

Srinivasa Nagar, Parsigutta,

Secunderabad.

..... PETITIONER

AND

1. N.T.R. University of Health Sciences, Vijayawada, Krishna Dt., rep. by its Registrar.
2. The Vice-Chancellor, N.T.R. University of Health Sciences, Vijayawada, Krishna District. … Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ order or direction more particularly one in the nature of Writ of Mandamus;

i. declaring the proceedings issued by the respondent No.2 in No.EIC/04919/04, dated 27-1-2005 disqualifying the petitioner from appearing for any university examinations for September / October, 2004 as punishment for use of unfair means during examinations as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and contrary to the

practice on record; consequently

ii. set aside the said proceedings; by

iii. directing the respondents to declare the petitioner's results of the examinations appeared in October / November, 2004 vide Hall Ticket No.9907137 of Final MBBS Part-II and allow him to continue further studies.

Counsel for the Petitioner: MR. Nandigam Krishna Rao

Counsel for the Respondents 1 & 2: Smt. Y.Padmavathi, SC for NTR University of Health Sciences.

The Court made the following common order :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2266 OF 2005

AND

WRIT PETITION NO.2024 OF 2005

-

COMMON ORDER :

The petitioners in both the writ petitions are aggrieved by the orders passed by the N.T.R. University of Health Sciences, (for short, 'the University') disqualifying the petitioners from appearing for any University Examinations for September / October, 2004 as a punishment for use of unfair means during the Final MBBS part-II examinations.

Since common questions arise for consideration, these writ petitions are heard together and decided by this common order.

The brief facts are as follows ::

The petitioner in W.P.No.2266 of 2005 is pursuing MBBS Course in the 1st respondent College at Hyderabad. He appeared for final MBBS Part-II examinations held in the Month of October, 2004. He states that on 29-10-2004 when he went to attend the Gynaecology Paper, the Invigilator took his hall-ticket and allowed him to write the examination. Thereafter, the Flying Squad visited the examination hall and called the petitioner to explain as to why three words are written on the back side of his hall-ticket. He explained to them that those words are not concerned with Gynaecology Examination Paper and that on the previous day while writing the Obstetrics Paper, after receiving the question paper for the purpose of recollecting his memory to answer a question he has written those three words on the back side of his hall-ticket. However, the Flying Squad seized the Hall-ticket of the petitioner from the Invigilator. Thereafter, the petitioner was served with a notice dated 27-12-2004 by the University alleging that it was reported by the Flying Squad that copying material and the hall-ticket with written material on it were found in his possession and as such he was directed to explain as to why his appearance from the examination should not be cancelled and why he should not be debarred from appearing in any examination and for prosecuting further studies for his misconduct. The petitioner states that the allegations in the show-cause notice are incorrect and as a matter of fact no copy material was recovered from him and the three words written on the reverse of the hall-ticket are not concerned with the examination held on 29-10-2004. Accordingly, he submitted a detailed reply dated 3-1-2005. However, the respondent University by impugned proceedings dated 27-1-2005 informed the petitioner that as per the Resolution of the Disciplinary Committee and

as per the Standing Orders of the N.T.R. University of Health Sciences, the petitioner is disqualified from appearing in any University examination for a period of one year including September / October, 2004 examination as punishment for use of unfair means during examinations. The petitioner was also informed that he is permitted to appear for the examination to be conducted in September/October, 2005 subject to acquiring eligibility for the same.

The petitioner in W.P.No.2024 of 2005 appeared for the Final Year MBBS Part-II Examination held in the month of October / November, 2004 with Hall Ticket No.9907137. On 29-10-2004, while he was appearing for the Gynaecology Paper, at about 9.15 a.m. the Flying Squad visited the examination hall. Though no copying material was found with the petitioner, having noticed that some rough work was written on the hall-ticket they have seized the same after taking a declaration from the petitioner that it is only a rough work for the answers being written by him in the answer-script. After that, the petitioner was allowed to continue the examination and he was also permitted to attend the practical examinations held in the month of November, 2004. However, his results were withheld and subsequently he was served with a notice dated 27-12-2004 alleging that the Flying Squad who visited the Examination hall on 29-10-2004 found copying material all over the hall-ticket of the petitioner front and back and the same was seized and handed over to the University and as such calling upon the petitioner to explain as to why his appearance from the examination should not be cancelled and why he should not be debarred from appearing in any examination and for prosecuting further studies for his misconduct. The petitioner states that the petitioner submitted his detailed explanation dated 31-12-2004 explaining that on 29-10-2004 the examination staff have collected his hall-ticket in the beginning itself, having found that something was written on it and as a matter of fact he has also declared that the written matter was only his rough work and it was not intended for copying. However, without holding any enquiry, the respondents have straightaway issued the impugned proceedings dated 27-01-2005 disqualifying him from appearing for the University Examinations in September / October, 2004 as a punishment for unfair means during the examinations.

The said orders of punishment dated 27-01-2005 are under challenge in these two

writ petitions contending that the respondent University failed to conduct any enquiry and failed to verify whether the hand-written matter on the hall-ticket is relevant or not and straightaway passed the impugned order which is contrary to the Standing Orders of the University.

It is further contended that even assuming that the petitioners have written something on the hall-tickets contrary to the Instructions, the respondent ought to have disqualified the petitioners only for that particular examination and disqualifying them from appearing in any University examinations for a period of one year is wholly unwarranted and contrary to para-5 of the Standing Orders.

In W.P.No.2266 of 2005, on behalf of the University, the Registrar of the University filed a counter-affidavit stating that a Flying Squad with two senior-most Professors was appointed in order to prevent the malpractices during the Final MBBS Part-I & Part-II Examinations held from 19-10-2004 to 3-11-2004. The members of the Squad visited 9 centres and caught copying material, cell phones, etc., from 21 students including the petitioner and submitted a report along with the copying material. It is further stated that when the Squad visited Osmania Medical College, Hyderabad on 29-10-2004, they seized the hall-ticket of the petitioner wherein he has written some words and also a bunch of Photostat material. The Flying Squad, Chief Superintendent, Invigilator as well as the petitioner have signed on the Malpractice Report Form on 29-10-2004 itself in the Examination hall. It is also stated that as per the Instructions to the candidates, they are not supposed to write anything on the hall-tickets and that all the rough work must be done on the right hand side leaving a margin for that purpose. They were also informed that copying in any form is a very serious offence carrying severe punishment and that they should not carry any written or printed matter in any form in the examination hall. As per the existing procedure, the result of the petitioner was withheld and after calling for his explanation, the matter was placed before the Disciplinary Committee consisting of the 5 Principals of the respective colleges apart from the Director of Medical Education and the Registrar of the 2nd respondent University. The Disciplinary Committee met on 17-01-2005 and having gone through the material, resolved that the petitioner is guilty having written some matter on hall-ticket. After following the due procedure, the impugned proceedings were issued disqualifying

the petitioner for one year.

In W.P.No.2024 of 2005, a separate counter-affidavit has been filed on the same lines. The allegations made by the petitioner have been denied and it has been specifically stated that the Flying Squad seized the hall-ticket from the petitioner wherein he had written with small letters fully on the both sides of the hall-ticket.

I have heard Sri Nandigam Krishna Rao, the learned Counsel appearing for the petitioners in both the writ petitions as well as the learned Standing Counsel appearing for the respondent University and perused the material on record.

Though the learned Counsel for the petitioners reiterated the contentions that the procedure followed by the respondents is in violation of the principles of natural justice since the petitioners were not afforded an opportunity of personal hearing and that the impugned orders which were passed without enquiry are arbitrary and illegal, I am unable to agree. Nothing has been placed before this Court to show that there is any statutory provision or there is any clause under the Standing Orders of the respondent University which provides for an opportunity of personal hearing to the candidate before the Disciplinary Committee. Admittedly, the charges were clearly communicated to the petitioners and they were afforded an opportunity to explain the same, which was considered by the Disciplinary Committee consisting of Principals of the concerned Colleges apart from the Director of Medial Education and the Registrar of the respondent University. The material seized by the Flying Squad from the petitioners and the copy of the Malpractice Form which contains the comments of the Observer as well as the signatures of the Invigilator and the Chief Superintendent as well as the minutes of the meeting of the Disciplinary Committee held on 17-01-2005 have been placed before this Court. So far as the petitioner in W.P.No.2266 of 2005 is concerned, the Disciplinary Committee found as under :

> *"Found guilty of having written material on hall-ticket in the Examination hall. The available evidence does not prove that he has actually indulged in copying."*

Thus, it is clear that it is not as if the petitioner has merely written some irrelevant words on the hall-ticket. Though the learned Counsel for the petitioner sought to be relied upon the letters of the Invigilator of the Exam dated 1-2-2005 and the letter of the Chief Superintendent dated 1-2-2005 stating that the petitioner was not carrying any material for malpractice purpose, as pleaded by the respondent University in the counter-affidavit, the said letters were subsequent to the impugned proceedings and at any rate they are contrary to the proceedings recorded in the Malpractice Form on the day of the examination. The said Malpractice Form shows that both the Invigilator as well as the Chief Superintendent of Exams have confirmed the fact that the hall-ticket with written material on it was found in possession of the petitioner. Hence, the letters addressed by the Invigilator and the Chief Superintendent relied upon by the petitioners are of no consequence and on that ground the finding recorded by the Disciplinary Committee does not warrant any interference.

So far as the petitioner in W.P.No.2024 of 2005 is concerned, the Disciplinary Committee found as under :

> *"Found guilty of having written material on hall-ticket in the Examination Hall. The available evidence does not prove that he has actually indulged in copying".*

In the Malpractice Form, it was clearly recorded that "copy all over the hall-ticket front and back." A copy of the said hall-ticket produced by the learned Standing Counsel before this Court also shows the writings on the entire hall-ticket both front and back.

On the basis of the said findings recorded by the Disciplinary Committee, the University passed the impugned orders awarding punishment of disqualification of the petitioners from appearing in any University Examination for a period of one year including September / October, 2004 Examination.

In the light of the material placed before this Court, I am unable to hold that either the Disciplinary Committee or the respondent University failed to apply their mind to the

material available before them while passing the impugned proceedings.

However, the learned Counsel for the petitioners vehemently contends that as per Para-5 of the Standing Orders of the respondent University, even if a student writes anything on the hall-ticket, he shall be disqualified only for that examination. The said para-5 of the Standing Orders reads as under:

> *"If a candidate writes even a question or anything concerned either on blotting paper, or any other piece of paper including question paper or hall-ticket or attempts to pass on question paper or part thereof, he/she shall be disqualified for that examination"*

On a plain reading, I am of the view that para-5 comes into operation only where the candidate writes a question or anything concerned to the question on the hall-ticket. As per the said provision, writing even a question or anything concerned on the hall-ticket is not permissible. In the cases on hand, the allegation is not that the petitioners have written the questions on the hall-tickets, but their hall-tickets were found with hand-written material relating to the subject.

Thus, it is a case where the candidate is found in possession of written material and therefore para-1 of the Standing Orders is attracted, but not para-5 of the Standing Orders as contended by the learned Counsel for the petitioner.

Para-1 of the said Standing Orders which deals with punishment for use of unfair means runs as under :

> *"During the University examination if a candidate is found in malafide possession of papers, books or notes or written notes on his clothes, body or table or chair, which is relevant to the examination(s) he will be disqualified from appearing in any university exam for one year and if found having copied will be disqualified for two years."*

The above provision shows that the punishment shall be disqualification for two years if the candidate is found to be copying, however if it is found that he is in possession of material as specified in the said para, the punishment shall be disqualification for one year. In the cases on hand, admittedly the petitioners were found in possession of the hall-tickets with written material. However, since the Disciplinary Committee recorded a finding that the evidence available does not prove that the petitioners have actually indulged in copying, the respondent University has taken a lenient view and has rightly imposed punishment of disqualification of the petitioners for one year.

The law is well settled that the scope of the judicial review vis-a-vis a malpractice case is very limited and where an expert body comes to a conclusion of fact, this Court while exercising the jurisdiction under Article 226 of the Constitution of India will never sit in appeal over such conclusion and substitute its own opinion as long as the enquiry is held to be fair and the candidate was afforded an adequate opportunity to defend himself { vide CENTRAL BOARD OF SECONDARY EDUCATION v. VINEETA MAHAJAN, GURU NANAK DEV UNIVERSITY v. HARJINDER SINGH and UNION PUBLIC SERVICE COMMISSION v. JAGANNATH MISHRA }.

Having regard to the facts and circumstances of the case, the Writ Petitions are devoid of merit and the interference of this Court under Article 226 of the Constitution of India is not warranted. Accordingly, both the Writ Petitions are dismissed. No costs.

07th March, 2005.

gbs

To :

1.The Principal, Osmania Medical College, Hyderabad.

2. The Registrar, N.T.R. University of Health Sciences, Vijayawada.

3.The Vice-Chancellor, N.T.R. University of Health Sciences, Vijayawada.

4.Two CD copies.